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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,535	05/01/2001	Barry Bond	MS1-665US	4017
22801	7590	11/30/2004	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			HOGAN, MARY C	
			ART UNIT	PAPER NUMBER

2123

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/847,535	BOND ET AL.	
	Examiner	Art Unit	
	Mary C Hogan	2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/18/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 43 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-46 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) * | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/6/01, 3/6/03, 10/18/04</u> * | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This application has been examined.
2. **Claims 1-42, 45-46** have been examined and rejected.

Election/Restrictions

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-42, 45-46, drawn to a kernel emulator comprising translating instructions, addresses, and arguments from non-native to native code, classified in class 703, subclass 23.
 - II. Claims 43-44, drawn to a kernel emulator comprising a target platform determiner, an instruction type detector, a translator selector, classified in class 703, subclass 23.
4. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as determining the target platform, determining the type of non-native instructions, and selecting a translator capable of translating the instructions. See MPEP § 806.05(d).
5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
6. During a telephone conversation with Mr. Kasey Christie on 11/11/04 a provisional election was made without traverse to prosecute the invention of Group I, Claims 1-42, 45-46. Affirmation of this election must be made by applicant in replying to this Office action. Claims 43-44 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

7. The disclosure is objected to because of the following informalities. Appropriate correction is required.
8. Page 23, line 16 "with in" should be "within".

Claim Objections

9. **Claims 10 and 42** are objected to because of the following informalities. Appropriate correction is required.
10. **Claim 10:** (SDS) is used twice, both to describe “process shared data structures” and “thread shared data structures”. It is unclear as to which data structure the acronym SDS stands for.
11. **Claim 42:** a space is needed between “claim 40” and “configured”.

Claim Interpretation

12. **Claims 9 and 29**, recite a “shared-memory manager configured to synchronize a native shared data structure with a non-native shared data structure”. It was unclear as to what “synchronize” meant. The specification states, “The address conversion (between native and non-native addressing formats) is done during synchronization” (page 23, lines 13-15). From this statement in the specification, it was determined that synchronization is the address conversion of a non-native address to a native address.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. **Claims 1,3-6,9-13,15-17,19-28, 34,37-40,42,45-46** are rejected under 35 U.S.C. 102(b) as being anticipated by Scalzi et al (U.S. Patent Number 5,560,013), herein referred to as **Scalzi**.

15. As to **Claims 1,3,4,13,15,16,34, 40 and 45**, **Scalzi** teaches: a kernel emulator for non-native program modules, the emulator comprising: an interceptor configured to intercept kernel calls from non-native program modules (**Figure 1, element 102 and description**); a call-converter configured to convert non-native kernel calls intercepted by the interceptor into native kernel calls (**Figure 1, element 103 and description**); wherein the call-converter comprises: an instruction-translator configured to translate non-native CPU instructions into native CPU instructions (**Figure 1, element 103 and description**); an address-translator configured to translate addresses from non-native length into native length (**Figure 3 and description, column 21, lines 42-48**).

16. As to **Claim 5**, Scalzi teaches: an emulator as recited in claim 1, wherein the call-converter comprises an argument-converter configured to convert non-native argument format into native argument format (**Figure 3 and description, column 21, lines 42-48**).
17. As to **Claim 6, 17 and 37**, Scalzi teaches: an emulator as recited in claim 1, wherein the call-converter comprises a translator configured to translate words from non-native word size into native word size (**Figure 3 and description, column 21, lines 42-48**).
18. As to **Claims 9 and 19**, Scalzi teaches: an emulator as recited in claim 1 further comprising a shared-memory manager configured to synchronize a native shared data structure with a non-native shared data structure (**column 18, lines 46-65**).
19. As to **Claims 10, 20-25**, Scalzi teaches: an emulator as recited in claim 1 further comprising a shared-memory manager configured to manage memory space that is accessible to both native and non-native program modules, wherein the shared-memory manager maps versions of process shared data structures (SDSs) and versions of thread shared data structures (SDSs) between native and non-native program modules (**column 1, lines 23-25, column 2, lines 54-62, column 3, lines 9-22, column 5, lines 4-16**) wherein the processes shared data structures include environmental conditions of the machine and the thread shared data structure is encompassed by the control programs.
20. As to **Claims 11, 42 and 46**, Scalzi teaches: an operating system on a computer-readable medium, comprising: a native kernel configured to receive calls from native program modules (**column 17, line 56-57**); a kernel emulator as recited in claim 1 configured to receive calls from non-native program modules (**Figure 1, element 102 and description**).
21. As to **Claim 12**, Scalzi teaches: an operating system on a computer-readable medium, comprising: a native kernel configured to receive calls from native APIs (**column 17, line 56-57**); a kernel emulator as recited in claim 1 configured to receive calls from non-native APIs (**Figure 1, element 102 and description**).
22. As to **Claims 26, 27, 28, 38, 39** Scalzi teaches: a computer comprising one or more computer-readable media having computer-executable instructions that, when executed by the computer, perform the method as recited in claim 13 (**Figure 1, element 102 and description**) and an operating system embodied on a computer readable medium (**column 3, lines 32-39**).

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

25. **Claims 2 and 14** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Scalzi** as applied to Claim 1 above, and further in view of Franz (Michael Franz, "Emulating an Operating System on Top of Another" Software - Practice and Experience. Vol. 23, No. 6, June 1993, pp. 677-692), herein referred to as **Franz**.

26. As to **Claims 2 and 14**, **Scalzi** teaches: a call converter comprising an instruction-translator configured to translate non-native CPU instructions into native CPU instructions (**Figure 1, element 103 and description**).

27. **Scalzi** does not expressly teach the call-converter comprises a translator configured to translate a non-native paradigm for passing parameters into a native paradigm for passing parameters.

28. **Franz** teaches: an emulator as recited in claim 1, wherein the call-converter comprises a translator configured to translate a non-native paradigm for passing parameters into a native paradigm for passing parameters (**page 681, paragraph 4, "boot loader"**) as a method to enable the emulation of one operating system on top of the other. **Franz** teaches that incompatible paradigms are one of the major hurdles that needs to be overcome in order to emulate one system on top of the other (**page 678, "Barriers to Portability"**).

29. It would have been obvious at the time the invention was made to modify the call converter as taught in **Scalzi** to further include the translation of paradigms as taught by **Franz** since **Franz** teaches

Art Unit: 2123

that incompatible paradigms are one of the major hurdles that needs to be overcome in order to emulate one operating system on top of the other (**page 678, "Barriers to Portability"**).

30. **Claims 7, 8, 18, 35 and 41** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Scalzi** as applied to Claim 1 above, and further in view of Duvall et al (U.S. Patent Number 4,742,447), herein referred to as **Duvall**.

31. As to **Claims 7, 8, 18, 35 and 41**, **Scalzi** teaches a block of memory configured as a range addressable by non-native program modules (**Figure 1, element 109**) and memory space that is accessible to both native and non-native modules (**Figure 1, "Target Real"** wherein the target storage is part of the physical storage of the native platform).

32. As to **Claims 35 and 41**, **Scalzi** teaches: translating non-native CPU instructions into native CPU instructions (**Figure 1, element 103 and description**); translating addresses from non-native length into native length (**Figure 3 and description, column 21, lines 42-48**).

33. **Scalzi** does not expressly teach: a memory constrainer configured to limit addressable memory to a range addressable by non-native program modules or a memory manger configured to manage memory space that is accessible to both native and non-native program modules.

34. **Duvall** teaches a memory constrainer configured to limit addressable memory to a range addressable by non-native program modules (**column 4, lines 43-46, column 6, lines 25-29, column 9, lines 20-25**) or a memory manger configured to manage memory space that is accessible to both native and non-native program modules (**Figure 1, element 13, column 9, lines 21-25**). **Duvall** teaches this method for virtual machines running different operating systems in a UNIX environment (**column 8, line 65-column 9, line 3**), virtual memory (**Figure 3**) and binary address translation (**column 9, lines 26-38**).

35. Both **Scalzi** and **Duvall** are directed to virtual machines and the use of virtual storage as well as binary address translation. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention as taught by **Scalzi** to further include limiting the addressable range and providing a memory manager as taught by **Duvall** since both **Scalzi** and **Duvall** are directed to virtual machines and virtual memory.

36. **Claim 36** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Scalzi** and **Duvall** as applied to claim 35 above, and further in view of **Franz**.

37. As to **Claim 36**, **Scalzi** and **Duvall** teach: a call converter comprising an instruction-translator configured to translate non-native CPU instructions into native CPU instructions (**Scalzi: Figure 1, element 103 and description**).

38. **Scalzi and Duvall** do not expressly teach translating a non-native paradigm for passing parameters into a native paradigm for passing parameters.

39. **Franz** teaches: an emulator as recited in claim 1, wherein the call-converter comprises a translator configured to translate a non-native paradigm for passing parameters into a native paradigm for passing parameters (**page 681, paragraph 4, "boot loader"**) as a method to enable the emulation of one operating system on top of the other. **Franz** teaches that incompatible paradigms are one of the major hurdles that needs to be overcome in order to emulate one system on top of the other (**page 678, "Barriers to Portability"**).

40. It would have been obvious at the time the invention was made to modify the call converter as taught in **Scalzi and Duvall** to further include the translation of paradigms as taught by **Franz** since **Franz** teaches that incompatible paradigms are one of the major hurdles that needs to be overcome in order to emulate one operating system on top of the other (**page 678, "Barriers to Portability"**).

41. **Claims 29-33** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Duvall** and further in view of **McCoy et al** (U.S. Patent Number 5,036,484), herein referred to as **McCoy**.

42. **As to Claim 29, Duvall teaches:** a method comprising: if the initiating program is non-native: limiting available memory to a range that is addressable by the non-native program module (**column 4, lines 43-46, column 6, lines 25-29, column 9, lines 20-25**); establishing non-native a version of a shared memory data structure that may be synchronized with a native version of the same shared memory data structure (**column 5, lines 45-51, column 6, lines 25-29**).

43. **Duvall** further teaches the data in a segment of virtual memory is created as a result of an application program being run (**column 5, lines 52-55**). While this implies that must be some determination as to whether a program is native or non-native allowing for the segment in virtual memory to be created, **Duvall** does not expressly teach determining whether an initiating program module is a native or non-native.

44. **McCoy** teaches determining whether an initiating program module is a native or non-native (**Figure 3a, element 36a, column 5, lines 40-48**) in a system that emulates a host program in a PC environment and translates host data to PC format by the emulation program (**column 5, lines 28-31**), allowing the system to know whether to perform a function of the native system or perform a function of the non-native system which includes the translation of code (**Figure 3a, element 31a and column 5, lines 40-48**) since in the emulation systems of the prior art, when operating in emulation mode, the native system is incapable of performing functions other than those of the terminal which is being emulated.

Therefore, the functions of the personal computer are not available in the emulation mode (**column 1, lines 32-39**).

45. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the determination of whether a program module is native or non-native as taught in **Duvall** with the method of determining whether a program module is native or non-native as taught by **McCoy** since **McCoy** teaches that typically, when operating in emulation mode, the native system is incapable of performing functions other than those of the terminal which is being emulated (**column 1, lines 32-39**) and his method provides a way of switching between running native and non-native functions. Further, both **Duvall** and **McCoy** are directed to the emulation of a non-native program module in a native environment and translating the non-native data into native data.

46. As to **Claim 30**, **Duvall** and **McCoy** teach: a method as recited in claim 29 further comprising: intercepting kernel calls from the non-native program module; converting the intercepted non-native kernel calls into native kernel calls (**Duvall: column 9, lines 26-41, McCoy, Figure 3a, elements 31a and 36a**).

47. As to **Claim 31**, **Duvall** and **McCoy** teach: a method as recited in claim 29 further comprising emulating a non-native kernel for which kernel calls from the non-native program module are intended (**Duvall: column 8, line 62-column 9, line 6, McCoy: Figure 3, element 35**).

48. As to **Claim 32**, **Duvall** and **McCoy** teach: a computer comprising one or more computer-readable media having computer-executable instructions that, when executed by the computer, perform the method as recited in claim 29 (**Duvall: column 8, lines 50-54, line 62-column 9, line 3, McCoy, column 4, lines 30-33**).

49. As to **Claim 33**, **Duvall** and **McCoy** teach: a computer-readable medium having computer-executable instructions that, when executed by a computer, performs the method as recited in claim 29 (**Duvall: column 8, lines 50-54, line 62-column 9, line 3, McCoy, column 4, lines 30-33**).

Conclusion

50. The prior art made of record, see PTO 892, and not relied upon is considered pertinent to applicant's disclosure, careful consideration must be given prior to Applicant's response to this Office Action.

51. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary C Hogan whose telephone number is 571-272-3712. The examiner can normally be reached on 7:30AM-5PM Monday-Friday. If attempts to reach the examiner by telephone are

Art Unit: 2123

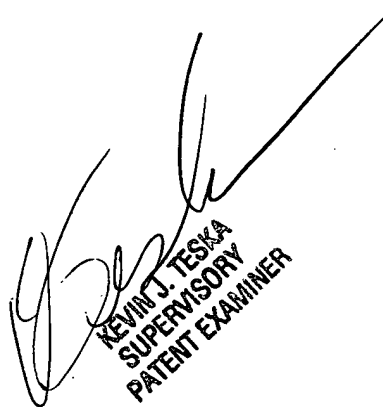
unsuccessful, the examiner's supervisor, Kevin Teska can be reached on 571-272-3716. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary C Hogan

Examiner

Art Unit 2123



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